BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: Cindy Ann Foxfoot, L.M. Midwife License No. LM 131 Respondent.	Case No.: 800-2019-053747

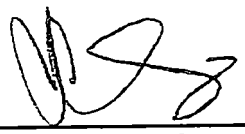
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on July 7, 2023.

IT IS SO ORDERED: June 8, 2023.

MEDICAL BOARD OF CALIFORNIA



Laurie Rose Lubiano, J.D., Chair
Panel A

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **CINDY ANN FOXFOOT, L.M.** **418 Factory Street** **Nevada City, CA 95959-2414** **Midwife License No. LM 131** Respondent.	Case No. 800-2019-053747 OAH No. 2022040104 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. William Prasifka (Complainant) is the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board). The Board has sole regulatory authority over the Midwifery Program of the State of California through its Division of Licensing. Complainant brought this action solely in his official capacity and is represented in this matter by Rob Bonta, Attorney General of the State of California, by Ryan J. McEwan, Deputy Attorney General.

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2. Respondent Cindy Ann Foxfoot, L.M. (Respondent) is represented in this proceeding by attorney David M. Balfour Esq., whose address is: 655 W. Broadway, Suite 1600 San Diego, CA 92101, dbalfour@buchalter.com.

3. On or about May 16, 2001, the Board issued Midwife License No. LM 131 to Cindy Ann Foxfoot, L.M. (Respondent). The Midwife License was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2019-053747, and will expire on June 30, 2023, unless renewed.

JURISDICTION

4. Accusation No. 800-2019-053747 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 17, 2021. Respondent timely filed her Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2019-053747 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2019-053747. Respondent has also carefully read, fully discussed with her counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

9. Respondent understands and agrees that the charges and allegations in Accusation No. 800-2019-053747, if proven at a hearing, constitute cause for imposing discipline upon her Midwife License.

10. Respondent agrees that, at a hearing, Complainant could establish a prima facie case for the charges in the Accusation, and that Respondent hereby gives up her right to contest those charges.

11. Respondent agrees that her Midwife License No. LM 131 is subject to discipline and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board and the Board's Midwifery Program may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. Respondent agrees that if she ever petitions for early termination or modification of probation, or if an accusation and/or petition to revoke probation is filed against her before the Board, all of the charges and allegations contained in Accusation No. 800-2019-053747 shall be deemed true, correct and fully admitted by Respondent for purposes of any such proceeding or any other licensing proceeding involving Respondent in the State of California.

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14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or opportunity to be heard by the Respondent, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Midwife License No. LM 131 issued to Respondent Cindy Ann Foxfoot, L.M. is revoked. However, the revocation is stayed and Respondent is placed on probation for thirty-five (35) months on the following terms and conditions:

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall comply with Business and Professions Code section 2518. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Education (CE) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for the 40 hours of CE in satisfaction of this probation requirement, in addition to the 36 hours required every two years, at the conclusion of each year of probation.

2. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical

record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Education (CE) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. MONITORING - PRACTICE/BILLING. Within 30 calendar days of the effective date of this Decision, Respondent shall submit to the Board or its designee for prior approval as a practice monitor(s), the name and qualifications of one or more licensed midwife whose license is valid and in good standing. A practice monitor shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision(s) and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement for approval by the Board or its designee.

Within 60 calendar days of the effective date of this Decision, and continuing throughout probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor

at all times during business hours and shall retain the records for the entire term of probation.

If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective date of this Decision, Respondent shall receive a notification from the Board or its designee to cease the practice of midwifery within three (3) calendar days after being so notified. Respondent shall cease the practice of midwifery until a monitor is approved to provide monitoring responsibility.

The monitor(s) shall submit a quarterly written report to the Board or its designee which includes an evaluation of Respondent's performance, indicating whether Respondent's practices are within the standards of practice of midwifery and whether Respondent is practicing midwifery safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a notification from the Board or its designee to cease the practice of midwifery within three (3) calendar days after being so notified. Respondent shall cease the practice of midwifery until a replacement monitor is approved and assumes monitoring responsibility.

In lieu of a monitor, Respondent may participate in a professional enhancement program approved in advance by the Board or its designee that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation.

4. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to

Respondent, at any other facility where Respondent engages in the practice of midwifery, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of midwifery in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

6. INVESTIGATION/ENFORCEMENT COST RECOVERY. Respondent is hereby ordered to reimburse the Board its costs of investigation and enforcement in the amount of $5,000. Costs shall be payable to the Medical Board of California. Failure to pay such costs shall be considered a violation of probation.

Payment must be made in full within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board of California. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. Failure to comply with the payment plan shall be considered a violation of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of the responsibility to repay investigation and enforcement costs, including expert review costs.

7. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

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Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice

Respondent shall not engage in the practice of midwifery in Respondent's or patient's place of residence, unless the patient has fully consented to the use of those locations for childbirth and has been fully informed of Respondent's standard of practice for transfer to a hospital in the event of complications. The patient's consent shall be documented in the Patient's medical chart and countersigned by the patient.

License Renewal

Respondent shall maintain a current and renewed California Midwife Certificate.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice midwifery, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

9. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

10. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing midwifery as defined in Business and

Professions Code sections 2507 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing midwifery in another state of the United States or Federal jurisdiction while on probation with the midwifery licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete an education and training program, at the discretion of the Board, that complies with the requirements for licensed qualification as set forth in Business and Professions Code section 2512.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; and Quarterly Declarations.

11. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. This term does not include cost recovery, which is due within 30 calendar days of the effective date of the Order, or by a payment plan approved by the Medical Board and timely satisfied. Upon successful completion of probation, Respondent's certificate shall be fully restored.

12. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and

carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice midwifery. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

14. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

15. FUTURE ADMISSIONS CLAUSE. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing action agency in the State of California, all of the charges and allegations contained in Accusation No. 800-2019-053747 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict license.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, David M. Balfour Esq. I understand the stipulation and the effect it

will have on my Midwife License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California, Division of Licensing.

DATED: 8/26/2022 Cindy Ann Foxfoot

CINDY ANN FOXFOOT, L.M.
Respondent

I have read and fully discussed with Respondent Cindy Ann Foxfoot, L.M. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8/26/2022 David M Balfour

DAVID M. BALFOUR ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Division of Licensing, Medical Board of California.

DATED: _____

Respectfully submitted.

ROB BONTA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

RYAN J. MCEWAN
Deputy Attorney General
Attorneys for Complainant

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DATED: _____

CINDY ANN FOXFOOT, L.M.
Respondent

I have read and fully discussed with Respondent Cindy Ann Foxfoot, L.M. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

DAVID M. BALFOUR ESQ.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Division of Licensing, Medical Board of California.

DATED: 8/26/2022

Respectfully submitted,

ROB BONTA
Attorney General of California
STEVE DIEHL
Supervising Deputy Attorney General

RYAN J. MCEWAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2019-053823

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BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **CINDY ANN FOXFOOT, L.M.** **418 Factory Street** **Nevada City, CA 95959-2414** **Licensed Midwife Certificate No. LM 131,** Respondent.	Case No. 800-2019-053747 **ACCUSATION**

PARTIES

1. William Prasifka (Complainant) brings this Accusation solely in his official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board). The Board has sole regulatory authority over the Midwifery Program of the State of California.

2. On or about May 16, 2001, the Board issued Licensed Midwife Certificate No. LM 131 to Cindy Ann Foxfoot, L.M. (Respondent). The Licensed Midwife Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2023, unless renewed. / / /

/ / /

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2507 of the Code states, in pertinent part:

"(a) The license to practice midwifery authorizes the holder to attend cases of normal pregnancy and childbirth, as defined in paragraph (1) of subdivision (b), and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn.

"(b) As used in this article, the practice of midwifery constitutes the furthering or undertaking by any licensed midwife to assist a woman in childbirth as long as progress meets criteria accepted as normal.

"(1) Except as provided in paragraph (2), a licensed midwife shall only assist a woman in normal pregnancy and childbirth, which is defined as meeting all of the following conditions:

"(A) There is an absence of both of the following:

"(i) Any preexisting maternal disease or condition likely to affect the pregnancy.

"(ii) Significant disease arising from the pregnancy.

"(B) There is a singleton fetus.

"(C) There is a cephalic presentation.

"(D) The gestational age of the fetus is greater than 37 0/7 weeks and less than 42 0/7 completed weeks of pregnancy.

"(E) Labor is spontaneous or induced in an outpatient setting.

"(2) If a potential midwife client meets the conditions specified in subparagraphs (B) to (E), inclusive, of paragraph (1), but fails to meet the conditions specified in subparagraph (A) of paragraph (1), and the woman still desires to be a client of the licensed midwife, the licensed midwife shall provide the woman with a

referral for an examination by a physician and surgeon trained in obstetrics and gynecology. A licensed midwife may assist the woman in pregnancy and childbirth only if an examination by a physician and surgeon trained in obstetrics and gynecology is obtained and the physician and surgeon who examined the woman determines that the risk factors presented by her disease or condition are not likely to significantly affect the course of pregnancy and childbirth.

"(3) The board shall adopt regulations pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part of 1 of Division 3 of Title 2 of the Government Code) specifying the conditions described in subparagraph (A) of paragraph (1).

"(c)(1) If at any point during pregnancy, childbirth, or postpartum care a client's condition deviates from normal, the licensed midwife shall immediately refer or transfer the client to a physician and surgeon. The licensed midwife may consult and remain in consultation with the physician and surgeon after the referral or transfer.

"(2) If a physician and surgeon determines that the client's condition or concern has been resolved such that the risk factors presented by a woman's disease or condition are not likely to significantly affect the course of pregnancy or childbirth, the licensed midwife may resume primary care of the client and resume assisting the client during her pregnancy, childbirth, or postpartum care.

"(3) If a physician and surgeon determines the client's condition or concern has not been resolved as specified in paragraph (2), the licensed midwife may provide concurrent care with a physician and surgeon and, if authorized by the client, be present during the labor and childbirth, and resume postpartum care, if appropriate. A licensed midwife shall not resume primary care of the client.

"(d) A licensed midwife shall not provide or continue to provide midwifery care to a woman with a risk factor that will significantly affect the course of pregnancy and childbirth, regardless of whether the woman has consented to this care

or refused care by a physician or surgeon, except as provided in paragraph (3) of subdivision (c).

"(e) The practice of midwifery does not include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version of these means.

"(f) A midwife is authorized to directly obtain supplies and devices, obtain and administer drugs and diagnostic tests, order testing, and receive reports that are necessary to his or her practice of midwifery and consistent with his or her scope of practice.

"(g) This article does not authorize a midwife to practice medicine or to perform surgery."

5. Section 2519 of the Code states, in pertinent part:

"The board may suspend, revoke, or place on probation the license of a midwife for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, all of the following:

"(1) Incompetence or gross negligence in carrying out the usual functions of a licensed midwife.

". . .

"(e) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision of term of this chapter.

". . .

"(j) Failing to do any of the following when required pursuant to Section 2507:

"(1) Consult with a physician and surgeon.

"(2) Refer a client to a physician and surgeon.

"(3) Transfer a client to a hospital."

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6. California Code of Regulations, title 16, section 1379.19 provides:

"(a) For purposes of Section 2507(f) of the code, the appropriate standard of care for licensed midwives is that contained in the 'Standard of Care for California Licensed Midwives' (September 15, 2005 edition) ('SCCLM'), which is hereby incorporated by reference.

"(b) With respect to the care of a client who has previously had a caesarean section ('C-section') but who meets the criteria set forth in the SCCLM, the licensed midwife shall provide the client with written informed consent (and document that written consent in the client's midwifery record) that includes but is not limited to all of the following:

"(1) The current statement by the American College of Obstetricians and Gynecologists regarding its recommendations for vaginal birth after caesarean section ('VBAC').

"(2) A description of the licensed midwife's level of clinical experience and history with VBACs and any advanced training or education in the clinical management of VBACs.

"(3) A list of educational materials provided to the client.

"(4) The client's agreement to: provide a copy of the dictated operative report regarding the prior C-section; permit increased monitoring; and, upon request of the midwife, transfer to a hospital at any time or if labor does not unfold in a normal manner.

"(5) A detailed description of the material risks and benefits of VBAC and elective repeat C-section."

7. The Standard of Care for California Licensed Midwives (September 15, 2005 edition), incorporated as the appropriate standard of care pursuant to 1379.19 of Title 16 of the Code of California Regulations, provides in pertinent part:

"STANDARD FIVE: The licensed midwife shall uphold the client's right to make informed choices about the manner and circumstances of normal pregnancy and

childbirth and facilitates this process by providing complete, relevant, objective information in a non-authoritarian and supportive manner, while continually assessing safety considerations and risks to the client and informing her of same.

"STANDARD EIGHT: The licensed midwife shall maintain complete and accurate health care records.

". . .

"STANDARD TWELVE: The licensed midwife shall order, perform, collect samples for or interpret those screening and diagnostic tests for a woman or newborn which are consistent with the licensed midwife's professional training, community standards, and provisions of the LMPA, and shall do so only in accordance with the client's informed consent.

". . .

"VII. INTRAPARTUM REFERRAL

- "To define and clarify minimum practice requirements for the safe care of women and infants in regard to INTRAPARTUM PHYSICIAN CONSULTATION, REFERRAL & ELECTIVE TRANSFER OF CARE & EMERGENCY TRANSPORT

"The licensed midwife shall consult with a physician and/or other health care professional whenever there are significant deviations from normal during a client's labor and birth, and/or with her newborn. If a referral to a physician is needed, the licensed midwife will, if possible, remain in consultation with the physician until resolution of the concern. It is appropriate for the licensed midwife to maintain care of her client to the greatest degree possible, in accordance with the client's wishes, remaining present throughout the birth and resuming postpartum care if appropriate.

"The following conditions require physician consultation and may require transfer of care. Consultation does not preclude the possibility of a domiciliary labor and birth if, following the consultation, the client does not have any of the conditions set out in this section.

"Intrapartum conditions – Serious medical/obstetrical or perinatal conditions, including but not limited to:

"Maternal:

"a. prolonged lack of progress in labor

". . .

"d. signs or symptoms of maternal infection

"Fetus:

"a. abnormal fetal heart tones (FHT)

"b. signs or symptoms of fetal distress

"c. thick meconium or frank bleeding with birth not imminent

"d. lie not compatible with spontaneous vaginal delivery or unstable fetal lie

"B. Emergency Transport: If on initial or subsequent assessment during the 1st, 2nd or 3rd stage of labor, one of the following conditions exists, the licensed midwife shall immediately consult with a physician and/or initiate immediate emergency transfer to medical care. Transport via private vehicle is an acceptable method of transport if, in the clinical judgment of the licensed midwife, that is the safest and most expedient method to access medical services.

". . .

"f. ominous fetal heart rate pattern or other manifestation of fetal distress

". . .

"j. presentation not compatible with spontaneous vaginal delivery

". . .

"n. any other condition or symptom which could threaten the life of the mother, fetus, or neonate as assessed by the licensed midwife exercising ordinary skill and knowledge."

COST RECOVERY

8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

enforcement of the case, with failure of the licensee to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTUAL ALLEGATIONS

9. On or about June 7, 2016, Patient A,[1] a 30-year old woman, began receiving prenatal care from Respondent and Respondent's partner, Kathleen Melissa Boyer, L.M., who co-own and operate Sweet Arrivals Midwifery, in Nevada City, California. Patient A hired Respondent and L.M. Boyer for midwifery care for a planned home birth, as well as prenatal and post-partum periods. Patient A was noted to be approximately 9 weeks and 1 day pregnant at this initial visit. She reported that she had one prior birth, delivered by cesarean section for fetal distress. She desired a trial of labor after cesarean delivery (TOLAC) to attempt a vaginal birth.[2]

10. Patient A's medical chart for the initial visit includes the following notations: "upward arrow nausea and vomiting"; "Blds check"; "diet counseling" (possibly indicating nutrition counseling but no specific recommendations were noted); "Hx" (indicating that a medical history was taken); "Birth hx" (indicating they reviewed the patient's prior pregnancy and delivery); "Gave Rhogam I.C." (indicating they provided a document about Rh factor and RhoGAM use in pregnancy);[3] "VBAC IC" (indicating they provided a document about VBAC); "Rec EPAs" (possibly indicating they recommended omega 3 fatty acids supplementation); "AWNL" "recheck" "1 mo" (indicating that all was within normal limits and that the patient should return for a routine prenatal visit in one month). There is no documentation that Respondent counseled Patient A about the risks and benefits of an at-home VBAC.

11. Patient A experienced significant weight gain throughout the pregnancy. Her weight was recorded at 122 pounds at the first visit, which was noted to be a gain of 4 pounds. At subsequent visits, Patient A's weight gain was approximately 14 pounds at 17 weeks, 20 pounds

[1] The patient's name is omitted to protect confidentiality. The patient's identity is already known to Respondent and will also be disclosed in discovery.

[2] A vaginal birth by a woman who has undergone a cesarean section in a previous birth is known as a VBAC.

[3] RhoGAM is a brand of Rh immunoglobulin, which is an injectable drug that can be given to pregnant women with RH-negative blood during pregnancy to treat Rh incompatibility.

at 21 weeks, 27 pounds at 27 weeks, 40 pounds at 34 weeks, and 47 pounds at 41 weeks. Despite this abnormally high weight increase, there is no documentation after the initial visit (prior to significant weight gain) that Respondent counseled Patient A about her diet or exercise. Respondent did not refer Patient A to a nutritionist or advise her to keep a diet/exercise diary. There is no documentation that Respondent advised Patient A that she was at risk of growing a bigger baby that might be difficult to deliver vaginally. There is also no note of Patient A's height in Respondent's medical records, nor any notation of her BMI (before or during the pregnancy). According to other providers' medical records, Patient A is 4 feet, 11 inches tall. Despite the abnormally high weight gain, Patient A's medical chart includes a notation "28w glucose not indicated." There is no documentation that Respondent: advised Patient A to take a gestational diabetes mellitus (GDM) test; informed her that her high weight gain could indicate a blood sugar insulin resistance problem, such as gestational diabetes; discussed the risks associated with gestational diabetes to the fetus (e.g., birth defects, stillbirth, fetal macrosomia (larger than average infant at birth), labor dystocia (abnormally slow or protracted labor), shoulder dystocia (difficulty delivering the fetal shoulders), and hypoglycemia (low blood sugar) after birth); or discussed the maternal risks of uncontrolled blood sugars in pregnancy (e.g., labor dystocia, vaginal lacerations, fetus too large for vaginal delivery, and postpartum hemorrhage (excessive bleeding after birth)).

12. Respondent's medical chart for Patient A shows that, on January 19, 2017, Patient A arrived for a routine prenatal appointment at 41 weeks, 3 days gestation. Patient A reported that she was "not sure if SROM yesterday"—meaning the spontaneous rupture of the membranes, or the leaking of amniotic fluid from the uterus. The chart reads that a vaginal exam was performed at that appointment, as confirmed by Respondent during an interview (the "Board Interview") with Board investigators. The cervix was noted to be 100% effaced (very soft), 2 cm dilated, and the fetal head was low at zero station.[4] The chart also notes that Patient A reported "bloody

[4] Fetal station describes how far down the fetal head has descended into the mother's pelvis, which ranges from -5 to +5. Positive numbers are used when the fetal head has descended beyond the ischial spines of the pelvis.

show"[5] and that she was having contractions every 9-15 minutes. The chart concludes, "SRM not confirmed."

13. Throughout the evening of January 19, 2017, Patient A reported experiencing mild early labor contractions. She contacted Respondent and L.M. Boyer the following day, on January 20, 2017, when the contractions intensified. Respondent and L.M. Boyer arrived at Patient A's home at approximately 2:00 p.m., and shortly thereafter recorded the fetal heart tones and Patient A's vitals, dilation, and contraction frequency.

14. The labor progressed throughout the day and evening on January 20, 2017, and into the early morning on January 21, 2017. Respondent and L.M. Boyer periodically recorded the fetal heart tones and Patient A's vitals, dilation, and contraction frequency. According to the medical records provided by Respondent to hospital staff at Rideout Memorial Hospital:

- The fetal heart tones were recorded approximately once per hour from 2:15 p.m. until 2:25 a.m., and then at 2:32 a.m., 2:41 a.m., 2:47 a.m., 3:00 a.m., 3:20 a.m., 3:27 a.m., 4:00 a.m., 4:08 a.m., 4:23 a.m., 4:35 a.m., 4:45 a.m., 5:00 a.m., 5:05 a.m., 5:15 a.m., 5:30 a.m., 5:42 a.m., and 5:55 a.m.;[6]
- Patient A's pulse was recorded at 2:15 p.m.;[7]
- Patient A's blood pressure was recorded at 2:15 p.m.;[8]
- Patient A's temperature was recorded as "nl" meaning "normal limits" at 2:15 p.m.;[9]

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[5] Bloody show describes when a small amount of blood and mucus is released from the vagina as the cervix starts to soften and thin (efface) and widen (dilate) in preparation for labor.

[6] The medical records provided by Respondent to the Medical Board include additional fetal heart tones after 1:30 a.m. on January 21, 2017. The recordings provide a single number and do not indicate whether the fetal heart tones were assessed before, during, or after contractions.

[7] The medical records provided by Respondent to the Medical Board include maternal pulse recordings at 6:45 p.m., 10:25 p.m., 12:27 a.m., 2:47 a.m., and 3:48 a.m.

[8] The medical records provided by Respondent to the Medical Board include an additional maternal blood pressure recording at 8:10 p.m.

[9] The medical records provided by Respondent to the Medical Board include additional "nl" maternal temperature recordings at 6:45 p.m., and 10:25 p.m., and a recording of 100.5 at approximately 4:00 a.m. During the Board Interview, Respondent told Board investigators that they used a thermometer for each temperature check. L.M. Boyer, however, stated that they performed temperature checks by feeling Patient A's skin rather than a thermometer, except at 4:05 a.m., when they documented an actual temperature rather than "nl."

- The cervical exams were recorded as 100% effaced, 4cm dilated, and +1 station at 2:15 p.m., 4-5 cm dilated and +1 station at 6:45 p.m., 7 cm dilated and +2 station at 10:25 p.m., and "complete" at 2:25 p.m.;[10] and
- The contractions were noted as happening every 4-5 minutes and lasting 60 seconds as of 2:15 p.m., and "strong" at 10:25 p.m.

15. According to the "Notes" in Patient A's medical chart, which were not included in the records provided to Rideout Memorial Hospital, Patient A began making pushing noises at 12:30 a.m., on January 21, 2017. It further notes, "1:30 [a.m.] try holding [cervical] lip up. 1:47 [a.m.] shower FHT[11] 136 not pushing. 1:52 [a.m.] FHT 160 [cervix] coming + going lip @ top. . . 2:37 [a.m.] FHT 128 – cx [cervix] staying gone most of time, in lith on bed. 2:47 [a.m.] 160 push cx [cervix] back p 84 [maternal pulse] resting btwn conts well [resting well between contractions]. 3:15 [a.m.] head molding. 3:27 [a.m.] to toilet, back to bed pushing. 3:35 [a.m.] 148. 3:40 [a.m.] 156. 3:48 [a.m.] 152 [pulse] 88. Unable to void.[12] 4:15 [a.m.] decided to catheter, not pushing, to toilet, then to tub. 5:05 [a.m.] letting her know baby is stuck eating, throwing up + to tub disc baby not coming, [Patient A] wants to eat, blueberries + banana, gets in tub. Wants to keep trying. 6:20 [a.m.] leave for hosp."

16. In a summary statement provided by Respondent and L.M. Boyer to the Board, Patient A began making pushing noises at 12:30 a.m. They encouraged her to breathe through contractions and offered to hold her cervical lip back while she tried pushing. The statement continues, "Attempt did not result in the cervix completely dilated. [Patient A] stopped trying to push while we held the cervix." The statement notes that Patient A "decided to try pushing again" at 1:52 a.m. The statement notes how the cervix needed to be held at times while Patient A tried pushing throughout the early morning.

17. The above records show an arrested labor. The presentation of a persistent anterior lip, and a failure to descend despite consistent contractions and optimal maternal positioning in

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[10] Stage one of labor is considered "complete" when the cervix has dilated to 10 centimeters.

[11] FHT refers to fetal heart tones.

[12] This refers to urinary retention, which is the inability to completely empty the bladder.

labor, strongly correlates to malposition and/or fetopelvic disproportion (a baby that is too large to fit through the maternal pelvis). Despite this, Patient A continued to labor at home without any documentation of a discussion with Patient A about the slow and abnormal progress of labor until 5:05 a.m.

18. Respondent and L.M. Boyer noted fetal heart tones of 160 at approximately 6:15 a.m. on January 21, 2017. The next check showed an absence of fetal heart tones, and a decision was quickly made to transport Patient A to the hospital. As noted above, at approximately 6:20 a.m., Respondent and L.M. Boyer transported Patient A to the nearest hospital, Rideout Memorial Hospital, which was approximately twelve miles away.

19. Patient A was admitted to Rideout Memorial Hospital at approximately 6:48 a.m. Upon admission, Patient A's cervix was noted to be 9cm dilated, 100% effaced, and the fetal head at station +1. The hospital admission notes state that a large pad was saturated with meconium fluid, and that the "homebirth midwife states meconium fluid has been present since around 6 a.m." A vaginal exam showed "thick meconium fluid." The hospital records further state that the hospital received a call "from midwife prior to pt [patient] arrival," stating that Patient A had "been pushing for 3 hours." Patient A's pulse was recorded as 118 bpm[13] at 6:50 a.m., 121 bpm at 7:05 a.m., 113 bpm at 8:09 a.m., 118 bpm at 8:37 a.m., and 122 bpm at 9:09 a.m.

20. Shortly after arrival at Rideout Memorial Hospital, fetal demise was confirmed via ultrasound. The fetus was delivered by repeat cesarean section. The operating physician and surgeon noted, "Significant thick meconium fluid noted upon uterine entry and staining of the placental cord and membranes with very foul odor in the operating room. . . . The fetal head was wedged in an occipital posterior position, very difficult to disengage from the pelvis."

21. In Patient A's complaint to the Board, she stated that she experienced severe numbness from the upper back down the right leg to mid-calf. She could not push comfortably due to the pain down her leg. When it was time for the emergency transport to the hospital, Patient A stated that she tripped and fell because her right leg was numb. Following the delivery,

[13] Bpm refers to beats per minute.

Patient A experienced drop foot[14] in her right foot for approximately five to six weeks, and continued to experience numbness and shooting pain in her right leg beyond that.

22. There is no documentation in the record that Respondent informed or counseled Patient A about daily fetal movement counting, particularly the importance of fetal surveillance starting at 41 weeks gestational age.

23. Even though Patient A's pregnancy went several days beyond 41 weeks, Respondent did not perform any non-stress tests (NST's) or biophysical profiles (BPPs) such as an amniotic fluid index (AFI) to assess whether the placenta was still working well and whether the fetus was doing well. There is no documentation of late-term pregnancy informed consent or counseling, and no discussion related to a NST or ultrasound at this point in the pregnancy.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

24. Respondent's license is subject to disciplinary action under section 2519, subdivisions (a)(1), (j)(1), (j)(2), and/or (j)(3), of the Code, in that she committed gross negligence during the care and treatment of Patient A, as more particularly alleged in paragraphs 9 through 23 above, which are hereby incorporated by reference and realleged as if fully set forth herein. Additional circumstances are as follows:

25. Respondent committed gross negligent acts, including but not limited to:

A. Failing to identify prenatal risk factors throughout pregnancy (VBAC, abnormal weight gain, late-term pregnancy); failing to discuss and obtain informed consent for the above risks; and failing to initiate appropriate late-term pregnancy care in light of risks (including NSTs, AFI, or other BPPs or ultrasounds);

B. Performing a digital vaginal exam—rather than a sterile speculum examination—when Patient A reported a concern of prelabor rupture of the membranes during the appointment on January 19, 2017;

C. Failing to identify labor arrest and to make a timely hospital transfer;

[14] This refers to difficulty or the inability to raise the front of the foot due to weakness or paralysis.

D. Failing to properly assess Patient A and her fetus during labor (e.g., monitoring maternal vital signs and fetal heart tones at sufficient intervals); and

E. Failing to keep adequate and accurate medical records, such as informed consent documents and documenting maternal vital signs appropriately.

SECOND CAUSE FOR DISCIPLINE

(Violation of Adopted Standards of Care)

26. Respondent's license is subject to disciplinary action under section 2519, subsections (a)(1), (j)(1), (j)(2), and/or (j)(3), and 2507 of the Code, as well as California Code of Regulations, title 16, section 1379.19, in that she failed to follow the Standard of Care for California Licensed Midwives. Each of the instances of gross negligence above are also considered separate and distinct violations of the Standard of Care for California Licensed Midwives. Additional violations of the Standard of Care for California Licensed Midwives are as follows: failing to provide sufficient information to Patient A for informed and shared decision-making, including the failure to provide clear communication throughout the labor regarding the abnormal progress of labor and lack of cervical change until shortly before the need for emergency transport to the hospital.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board issue a decision:

1. Revoking or suspending Licensed Midwife Certificate Number LM 131, issued to Respondent Cindy Ann Foxfoot, L.M.;

2. Ordering Respondent Cindy Ann Foxfoot, L.M., to pay the Medical Board of California the reasonable costs of the investigation and enforcement of this case, and, if placed on probation, to pay the Board the costs of probation monitoring; and

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3. Taking such other and further action as deemed necessary and proper.

DATED: DEC 17 2021

Reji Varghese
Deputy Director

For: WILLIAM PRASIFKA
Executive Director
Midwifery Program
Department of Consumer Affairs
State of California
Complainant

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